



## Legal Update

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May 1, 2014

**The Supreme Court held that an anonymous tip regarding impaired driving can provide police with reasonable suspicion to stop a vehicle depending on the totality of the circumstances.**

**Naverette v California, Supreme Court, No. 12-9490 (2014)**

**Background:** On August 23, 2008, a Mendocino County 911 dispatch team received a call from a neighboring dispatcher in Humboldt County. The Humboldt County dispatcher relayed that a 911 caller was run off the road by a silver pickup truck with a specific license plate. The information was broadcasted and police from Mendocino County passed a pickup truck matching the description. Although police did not observe the pickup truck driving erratically, the police stopped the vehicle. As police approached the truck they smelled marijuana and recovered thirty (30) pounds of marijuana from the truck bed. The officers arrested the driver, Lorenzo Prado Navarette (hereinafter referred to as “Navarette”) and the passenger. Navarette and the passenger filed a motion to suppress arguing that the traffic stop violated the Fourth Amendment because the officer lacked reasonable suspicion of criminal activity. The motion to suppress was denied and the case went to trial and was appealed. The prosecutor in this case failed to introduce the recording of the call or the dispatcher or caller at the suppression hearing. Even though the caller had identified herself, the information she provided to the dispatcher was treated as an anonymous tip. The Supreme Court examined the validity of a vehicle stop based upon the fact that an anonymous 911 caller's reported that the vehicle in question had just run the caller off the road. The issue before the Court was whether or not an anonymous call in this case amounted to reasonable suspicion which would justify a stop.

**For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.**

**Conclusion:** The Supreme Court concluded that an anonymous call can provide police with reasonable suspicion to stop the vehicle. The Supreme Court emphasized that the caller's eyewitness account of the truck's reckless driving coupled with the fact that the officer corroborated the truck's description, location and direction established that the tip was reliable to justify the stop.

**1<sup>st</sup> Issue: Was the anonymous tip reliable?**

The Supreme Court concluded that the 911 call was sufficiently reliable for the officer to credit the caller's account because of the specific details that the caller provided. Since the caller reported that the driving was sufficiently dangerous the officer was justified in looking for the pickup truck that had allegedly forced the caller off the road. The caller provided specific details about the vehicle including the color, style and type of vehicle along with the license plate which would suggest the caller possessed eyewitness knowledge of the alleged driver. An informant's explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, gives greater weight to the tip. A driver's claim that another vehicle ran her off the road implies that the informant knows the other car was driven dangerously.

In addition to the reliability of the caller the police in this case were able to corroborate specific details that were given to them by the call. For example, the police located the pickup truck near a mile marker that would correspond to the location and approximate time the vehicle would be found based on the initial call. The timeline of events suggests that the caller reported the incident shortly after she was a run off the road. Typically, reports that are "contemporaneous with the event are perceived as more trustworthy because there is less likelihood of deliberate or conscious misrepresentation."

Another factor the Supreme Court considered when evaluating whether the caller was reliable was the fact that the caller used the 911 emergency system. Calls to the emergency system are recorded and can lead to the identification of the caller which further added to the reliability of the caller.

**2<sup>nd</sup> Issue: When does an anonymous tip amount to reasonable suspicion that criminal activity is afoot?**

The Supreme Court analyzed whether the tip that a truck had just ran another motorist off the road was a sufficient basis to establish reasonable suspicion to believe criminal activity, such as impaired driving was occurring. According to the Supreme Court a reliable tip of dangerous driving would support reasonable suspicion of impaired driving. The Supreme Court compared this case to *Alabama v White* where police acted on information provided to them by an anonymous informant that the defendant was going to drive "from a particular apartment building to a particular motel in a brown Plymouth station wagon with a broken tail light," to sell cocaine. Since the police were able to corroborate some of the details provided by the informant the Supreme Court found that that tip created reasonable suspicion that criminal activity was afoot and justified the stop of the vehicle. Conversely, the Court in *Florida vs. J.L.* found that the information provided to police regarding the location and description of the defendant was not sufficient for a stop even though a firearm was recovered. The stop in *Florida v J.L.* was deemed not valid because minimal details were provided and the Court found that anyone could make a phony call providing description and location.

The Supreme Court has concluded that police are permitted to conduct brief investigative traffic stops under the 4<sup>th</sup> Amendment if the officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v Cortez*, 449 U.S. 411 (1981). The "reasonable suspicion" necessary to justify such a stop "is dependent upon both the content of information possessed by police and its

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degree of reliability,” which is particularly relevant when analyzing anonymous tips. “An anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity,” because “ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations,” and an anonymous tipster's veracity is “by hypothesis largely unknown, and unknowable.” *Adams v White*, 407 U.S. 143 (1972). However an anonymous tip can demonstrate “sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop.”

The Supreme Court has rejected the argument that the reasonable cause for an investigative stop can only be based on the officer's personal observation, rather than on information supplied by another person.” Lastly, the Supreme Court also found in this case that the officer's failure to observe additional suspicious conduct during the short period that he followed the truck did not dispel the reasonable suspicion of drunk driving, and the officer was not required to follow the truck for a longer period to verify the stop. Again the Supreme Court emphasized that the totality of the circumstances are significant when evaluating whether reasonable suspicion exists.

**Commentary:** The decision in this case was a close call for the Supreme Court and was fact specific. As the dissent highlighted, this decision does not establish that every anonymous report of reckless driving gives police reasonable suspicion to stop a vehicle. As the Supreme Court noted, this case may have not been appealed if the prosecutor had introduced the 911 tape or dispatcher information during the suppression hearing.

In Massachusetts, anonymous reports can provide reasonable suspicion to stop vehicles as long as two (2) essential components are met:

- The anonymous report must have some **indicia of reliability** going beyond simply describing location and description.
- The reliable anonymous information must add up to reasonable suspicion to believe that criminal activity is afoot.

The Court in *Lyons* found that an anonymous tip along with lack of police corroboration failed to establish reasonable suspicion to stop defendants. *Commonwealth v. Lyons*, 409 Mass. 16 (1990). The tipster provided no information regarding the basis of the informant's knowledge or his reliability, and the quantity and quality of the details the police corroborated were insufficient to establish any degree of suspicion that could be deemed reasonable. Since the police were not able to verify predictive details that were not easily obtainable by an uninformed bystander, the *Lyons* Court found there was no reasonable suspicion. If the anonymous tip provided some “specificity of non-obvious facts, which indicated that the tipster had some familiarity with the suspect, or specific facts, which predicted behavior,” the Court may have found that reasonable suspicion existed.

Unlike *Lyons*, the Court in *Love* found that the basis of knowledge prong will be satisfied when the source of the tip or information reported to the police was based on the “witness’ personal observations and the reliability (veracity) prong will be satisfied when the source of the tip or information is identifiable if not identified.” In *Love*, a passenger in a vehicle stopped at a police barracks to report that there were two vehicles racing. Even though the trooper did not obtain the individual’s name the Court held that the individual was identifiable by the license plate that the desk officer had recorded. These factors were sufficient to establish the prongs required. *Commonwealth v. Love*, 56 Mass. App. Ct. 229 (2002). Similarly, the Court found in *Carey*

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that “if the citizen or victim informant is an eyewitness, this will be enough to support probable cause even without specific corroboration of reliability.” *Commonwealth v. Carey*, 407 Mass. 528 (1990).

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